

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN LOFFREDO, *et al.*,

Plaintiffs,

v.

DAIMLER AG, *et al.*,

Defendants.

Case No. 2:10-cv-14181

Hon. Julian A. Cook

**DEFENDANT DAIMLER AG'S MOTION TO CERTIFY
JUNE 6, 2011 ORDER AS A FINAL ORDER AND JUDGMENT**

NOW COMES Defendant Daimler AG ("Daimler"), by its attorneys Shearman & Sterling LLP and Dickinson Wright, PLLC, and makes this Motion to Certify the June 6, 2011 Order as a Final Order and Judgment as to all Defendants. Pursuant to E.D. Mich LR 7.1(a)(1), concurrence in the relief requested was sought and obtained. In support of the Motion to Certify, Daimler states as follow:

1. On or about September 10, 2010, Plaintiffs filed two complaints in the Wayne County Circuit Court of Michigan alleging various causes of action arising from their participation in the Supplemental Executive Retirement Plan of the Chrysler Corporation and/or the DaimlerChrysler Corporation. One complaint was filed against Daimler, Dieter Zetsche ("Zetsche"), Thomas LaSorda ("LaSorda"), and State Street Bank and Trust Company ("State

Street”) (“Daimler action”). Another complaint was also filed in Wayne County Circuit Court against Cerberus Capital Management, L.P., and State Street (“Cerberus action”).¹

2. On October 19, 2010 Daimler removed the Daimler action to this Court on the basis of its federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441, and its diversity jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d).

3. The Cerberus action was also removed on October 21, 2010.

4. On November 16, 2010, this Court granted Defendant Zetsche’s Motion to Quash Service of Process. Upon the request of Plaintiffs, a new summons was issued on November 18, 2010.

5. On December 13, 2010, Defendants State Street, Daimler and LaSorda filed motions to dismiss the complaint in the Daimler action pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

6. On November 14, 2010, the Cerberus action was transferred to Judge Cook, and on March 24, 2011, the Court entered an order consolidating the Daimler and Cerberus actions.

7. By stipulation of Plaintiffs and Cerberus, Plaintiffs dismissed their claims against Cerberus without prejudice on February 14, 2011.

8. Following a hearing on the motions to dismiss in the Daimler action and the Cerberus action on April 12, 2011, the Court entered an Order on June 6, 2011 (“June 6 Order,” a copy of which is attached at Tab 1 hereto) which dismissed with prejudice Plaintiffs’ claims against Daimler, State Street and LaSorda in the Daimler action. The June 6 Order also dismissed the complaint in the Cerberus action in its entirety.

¹ Both the Daimler and Cerberus actions included Defendants John Doe and Mary Roe. They are unidentified officers, partners, managers, directors, and trustees of Chrysler Corporation and/or DaimlerChrysler Corporation.

9. Also in the June 6 Order, the Court gave Plaintiffs a period of ten (10) days to show cause why the claims against Zetsche, which are substantially the same as the dismissed claims against LaSorda, should not also be dismissed for failure to state a claim upon which relief can be granted. The June 6 Order stated that upon the expiration of the ten (10) day time period, and in the absence of a “legally plausible explanation” by the Plaintiffs, this Court shall enter an order of dismissal.

10. Plaintiffs did not file any response to the Court’s show cause order within the ten (10) day period. Plaintiffs have also not filed any other motion with the District Court (i.e., a Motion for Reconsideration) to contest any aspect of the June 6 Order.

11. Although Plaintiffs have not filed any response to the Court’s June 6 Order, a final order of dismissal has not been entered by the Court as stated in the June 6 Order.

12. On June 28, 2011, Plaintiffs filed a Notice of Appeal of the June 6 Order.

13. Daimler respectfully requests the Court enter an order dismissing the complaint as to Zetsche for failing to state a claim upon which relief can be granted, and certify its June 6, 2011 Order as a Final Order and Judgment as to all Defendants.

WHEREFORE, Daimler respectfully requests the Court enter an order dismissing Plaintiffs’ complaint as to Zetsche for failing to state a claim upon which relief can be granted, and certify the June 6 Order is a Final Order and Judgment as to all Defendants. A proposed order is attached at Tab 2.

Respectfully submitted, this 21st day of July, 2011.

DICKINSON WRIGHT PLLC

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**DEFENDANT DAIMLER AG'S BRIEF IN SUPPORT OF MOTION TO CERTIFY
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STATEMENT OF THE ISSUE

1. Whether the Court should certify its June 6, 2011 order as a final order and judgment as to all defendants to allow Plaintiffs to move forward with their intended appeal where Plaintiffs failed to either show cause as required by the June 6, 2011 order or file a motion for reconsideration under E.D. Mich. LR 7.1(h)?

Defendant Daimler AG responds: Yes

Plaintiffs respond:

MOST APPROPRIATE AUTHORITY FOR RELIEF SOUGHT

1. June 6, 2011 order stating the Court shall enter a final order dismissing all of Plaintiffs' claims against all Defendants if Plaintiffs failed to show cause within ten (10) days why their complaint should not also be dismissed as to Defendant Zetsche.

**DEFENDANT DAIMLER AG'S BRIEF IN SUPPORT OF MOTION TO CERTIFY
JUNE 6, 2011 ORDER AS A FINAL ORDER AND JUDGMENT**

Defendant Daimler AG ("Daimler"), by its counsel, files this Brief in Support of Daimler's Motion to Certify The Court's June 6, 2011 Order As A Final Order and Judgment incorporates by reference and relies on the facts and arguments set forth in the accompanying Motion.

Pursuant to E.D. Mich LR 7.1(a)(1), concurrence in the relief requested was sought and obtained.

WHEREFORE, Daimler respectfully requests the Court enter an order dismissing Plaintiffs' Complaint as to Zetsche for failing to state a claim upon which relief can be granted, and certify the June 6 Order as a Final Order and Judgment as to all Defendants. A proposed order is attached at Tab 2.

Respectfully submitted, this 21st day of July, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2011, I electronically filed DEFENDANT DAIMLER AG'S MOTION TO CERTIFY AND BRIEF IN SUPPORT OF MOTION TO CERTIFY using the ECF System which sent notification to registered participants of the ECF System as listed on the Court's Notice of Electronic Filing.

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